IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.36981 of 2019
Date of Decision:19.09.2023

Rinku Jindal and another

....Petitioners

vs.

Indian Oil Corporation and another

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. R.S.Kundu, Advocate and
Mr. Chirag Kundu, Advocate and
Mr. Anshul Chahal, Advocate
for the petitioner

Mr. Ashish Kapoor, Advocate
for the respondents

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JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition under Articles 226/227 of Constitution of India are seeking setting aside of order dated 10.04.2019 (Annexure P-23) whereby respondent has rejected candidature of the petitioners and order dated 06.03.2013 (Annexure P-2) whereby respondent has withdrawn letter of intent dated 02.06.2011/15.06.2011 (Annexure P-1).

2. The petitioners pursuant to an advertisement applied for the retail outlet under 'Open (W) Category'. The petitioners No.1 and 2 entered into partnership and application was filed as partners. In the application dated 08.10.2010, the petitioners declared their financial capacity. In the

application, liquid assets were declared to the tune of Rs.32.23 lakh. The financial capacity disclosed in application dated 08.10.2010 was based upon balance lying in bank accounts on 06.10.2010. The petitioners No.1 and 2 converted a sum of Rs.5 lakhs each lying in their accounts into FDR. In the application dated 08.10.2010, it was disclosed that there are two FDRs i.e Rs.5 lakhs each, however, total amount was disclosed Rs.32 lakhs. The respondents considered application of the petitioners and on finding eligible for the retail outlet issued letter of intent dated 02.06.2011 (Annexure P-1).

3. The respondents on the basis of purported information vide order dated 06.03.2013 cancelled LOI dated 02.06.2011. The petitioners preferred CWP No.1885 of 2014 before this Court which came to be dismissed vide order dated 18.09.2017. The petitioners assailing order dated 18.10.2017 passed by learned Single Judge preferred intra Court appeal LPA No. 2347 of 2017 before this Court. A Division Bench vide order dated 17.12.2018 set aside order passed by learned Single Judge and remitted the matter back to competent authority to pass afresh order after granting opportunity of hearing to the petitioners.

4. The respondents vide impugned speaking order dated 10.04.2019 has rejected candidature of the petitioners on the ground that there was mis-declaration in the application qua financial details.

5. Learned counsel for the petitioners inter alia contends that the petitioners inadvertently converted a sum of Rs.10 lakhs from their saving account into fixed deposit. The aforesaid amount was not withdrawn or used by them. The money remained with the bank though its nature was changed i.e. saving account to fixed deposit account. The petitioners disclosed this

fact in their application dated 08.10.2010 which is evident from the index filed with the application. The conversion of amount lying in saving account into FDR did not change financial status of the petitioners. It further did not effect their financial capacity. The respondents acting in a mechanical manner has dismissed application of the petitioners. The respondent beyond 30 days from the date of LOI could not entertain any complaint.

In support of their contention, the petitioners relied upon judgment dated 23.03.2011 passed by Co-ordinate Bench of this Court in CWP No. 1761 of 2010 and judgment dated 07.07.2011 whereby Division Bench of this Court in LPA No. 1083 of 2011 has dismissed appeal against the aforesaid Single Judge judgment.

6. Per contra, learned counsel for the respondents submits that the petitioners in their application dated 08.10.2010 has disclosed a sum of Rs.32,23,079/- as balance in their account whereas on verification, it was found that balance lying in their accounts on 08.10.2010 was Rs.22,23,079/- meaning thereby they have withdrawn a sum of Rs. 10 lakhs prior to filling application. The petitioners filed an application dated 08.10.2010 whereas they disclosed balance which was lying on 06.10.2010. It appears that a sum of Rs.10 lakhs was withdrawn during the intervening period i.e. 06.10.2010 to 08.10.2010. The act of petitioners amounts to furnishing of false information as contemplated by paragraph 19.2 of the advertisement. The petitioners were awarded marks on the basis of bank balance disclosed by them. As Rs.10 lakhs has already been withdrawn, thus, they wrongly secured marks qua aforesaid amount i.e. Rs.10 lakhs.

The respondents relied upon judgment of Hon'ble Supreme Court in **Shiv Kant Yadav vs. Indian Oil Corporation and others, 2007 (4) SCR 1000** and judgments of Division Bench of this Court dated 21.05.2014 and 18.02.2020 passed in LPA No. 866 of 2014 titled as "Sunita vs. Indian Oil Corporation and another" and LPA No. 459 of 2018, titled as "Indian Oil Corporation Limited and another vs. M/s Swastic Filling Station" respectively.

7. I have heard learned counsels for the parties and perused the record.

8. The sole contention of the respondents to reject candidature of the petitioners is that the petitioners filed application on 08.10.2010 wherein financial status i.e. amount lying in bank accounts on 06.10.2010 was disclosed. The petitioners had disclosed balance of Rs. 32.23 lakh whereas during field verification, actual balance lying in their accounts on 08.10.2010 was found Rs. 22.23 lakh. There are two partners. The petitioners in the intervening period i.e. 06.10.2010 to 08.10.2010 had withdrawn a sum of Rs. 10 lakhs.

From the perusal of brochure of the respondent-corporation, it comes out that 12 marks are awarded for liquid cash i.e.bank balance, FDRs, shares of listed companies. The respondents considered a sum of Rs. 32.23 lakh lying in the bank accounts of the petitioners and 12 marks were awarded to each partner. The petitioners in their application enclosed index wherein the petitioners disclosed detail of FDRs. As per enclosed detail, the petitioners converted a sum of Rs. 5 lakh each in the FDR during 6.10.2010 to 08.10.2010. This fact was duly disclosed in the application form by way of enclosing copy of FDR. The petitioners have been awarded 12 marks each on the basis of balance lying in the bank accounts. The amount lying in bank accounts as well as in the form of FDR, as per brochure, is considered under one head. The petitioners were admittedly having Rs. 33.23 lakh in their accounts, however, during 06.10.2010 to 08.10.2010 they converted Rs. 10 lakhs out of aforesaid Rs. 33.23 lakh in FDRs. It is not a case where the petitioners have withdrawn a sum of Rs. 10 lakh before filing application. Had the petitioners disclosed balance on a particular date and withdrawn the amount before the date of filing application, the situation would have been different. The respondents have treated the amount lying in savings bank account at par with amount lying in FDR. The petitioners have disclosed FDRs in the application form. The petitioners cannot be held guilty of suppression or mis-statement of fact or filing of incorrect information. The judgments relied upon by respondents are adverting with a situation where applicant filed misleading information like in the case of **Shiv Kant Yadav (supra)**, the applicant was supposed to have annual income less than Rs. 2 lakh whereas he disclosed income of Rs. 84,000/- per annum and during verification, income was found though less than Rs. 2 lakh but it was Rs.1.64 lakh. Similarly, Division Bench of this Court in Sunita (supra) has upheld rejection of application on account of declaration of incorrect amount. The amount was withdrawn by the applicants, thus, Court has concluded that applicant had furnished false information and clause 19.2 of the brochure was invoked. In the case in hand, there is no mis-declaration of financial status. The petitioners, admittedly, were having Rs.33.23 lakh on 06.10.2010 and the balance remained same on 08.10.2010 though a sum of

Rs. 10 lakh lying in saving bank account was converted into FDR and this fact was duly reflected in the application form.

9. In the aforesaid facts and circumstances, the petition deserves to be allowed and accordingly allowed. The impugned orders are set aside. The respondents, in the wake of above findings, shall reconsider case of the petitioners and do the needful within three months from today.

(JAGMOHAN BANSAL)
JUDGE

19.09.2023
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Whether speaking/reasoned: Yes
Whether reportable: Yes/No